EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

8 April 2021

Case Document No. 3

Validity v. Finland
Complaint No. 197/2020

VALIDITY'S RESPONSE TO THE GOVERNMENT'S OBSERVATIONS ON ADMISSIBILITY

Registered at the Secretariat on 31 March 2021

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Written response

to the Observations of the Government of Finland

on the admissibility of the collective complaint

Validity v. Finland

Complaint No. 197/2020

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I. Introduction

1. By its letter of 3 February 2021, ref. no. 21/2021 LV/KOG, the European Committee of Social Rights (*hereinafter* "the European Committee") provided the complainant with the Written Observations of the Finnish Government (*hereinafter* "Government's Observations") on the admissibility of the present complaint and invited the complainant to submit a written response by 31 March 2021.

2. The complainant organisation, together with its partners, Law Firm Kumpuvuori Ltd. and European Network on Independent Living - ENIL, hereby submit their written comments. They observe that the objections raised by the Finnish Government appear to target the merits of the complaint rather than its admissibility. They provide no basis for concluding that the complaint is not admissible. The complainant, therefore, requests the European Committee to declare the complaint admissible.

II. Comments on the Government's observations

3. The Government have not raised any formal objection as to the admissibility of the complaint, and their comments are focused entirely on the substantive arguments raised by the collective complaint. The Government dispute the presented facts and the legal argumentation of the complainant and suggest that the complainant has inaccurate information because the measures adopted in relation to the housing service units were meant to protect persons residing within them, not to restrict their rights. However, the complainant reminds that purpose of these measures is not disputed in the present complaint; what is disputed is their rationality, reasonableness and respect for the human rights of persons with disabilities.

4. In the complainant's views, the comments submitted by the Government concern the merits of the complaint rather than its admissibility. Nevertheless, in the lines below, the complainant provides a brief reaction to the Government's Observations so as to demonstrate that the complaint is not manifestly unfounded as asserted by the Government.

5. First, the Government stipulated that the disputed measures were adopted in order to protect the population within the institutional settings. They claim that the low number of infected people in Finland supports the conclusion that such measures were effective in protecting against the spread of the virus. The Government reproach the complainant for not suggesting concrete data supporting their claims that persons with disabilities in housing service units were put at an increased risk by the imposed measures. However, it is precisely the lack of available data which the complaint repeatedly raises as a problem. It is indeed difficult to assess the efficacy of public health measures without adequate data, but the obligation to collect and make available such data does not rest with the complainant; it rests with the Government.

6. However, the data about affected persons within the housing service units is not apparently possessed by the Government either. The Law Firm Kumpuvuori Ltd.

repeatedly requested the data from the public authorities and only received a response that such data is not available (see the complaint, §§ 40-42, 130-131). While the Government refers to certain data to suggest that their strategy was, in fact, efficient, this data does not relate to persons within the housing service units specifically. In relation to the housing service units, the Government only puts forth a vague claim of lack of awareness of "any large-scale infections". Again, no specific numbers were given.

7. Apart from the reiteration about the lack of available data in relation to the effect of the pandemic on persons with disabilities in housing service units, the complainant wishes to emphasise that the complaint does not rest predominantly on the assessment of such data. The core argument raised by the complaint was that institutions were, according to the available scientific knowledge, potential hotbeds, not that this risk materialised in Finland. Even a complete lack of infected persons within the institutions in Finland would not change the fact that if the virus did enter those confined places, which is never possible to rule out, all their residents would be at a radically enhanced danger than they would be in the community.

8. Second, the Government also claim that persons with disabilities were not treated unequally, as all the measures complained of were also adopted in relation to all housing service units and in different forms also to the entire population. The housing service units, in relation to which the restrictions were adopted, are social services designed, run for and used solely by persons with disabilities and elderly persons. The fact that a measure is discriminatory towards two different groups of persons does not rule out it being discriminatory, as appears to be suggested by the Government. The claim of discrimination, detailed in §§ 125-126 of the complaint, is based predominantly on the stereotypical and prejudiced approach towards these groups of people manifested by the Government. As opposed to the general population, which as the Government admits was simply instructed to avoid social contacts, this part of the population was completely *forbidden to leave their homes as well as to accept any visits.* The Government, even in their comments, did not offer a reason why such blanket prohibition was only needed for these groups of people.

9. Third, the Government also contests that persons with disabilities were denied access to healthcare or essential social services. It specifies that the instructions are given by the Ministry on 20 March 2020 explicitly stated that the provision of thereof should not be disabled by the introduced measures. The complainant did include this information in the original complaint, too (see § 37 of the complaint). Nevertheless, as is detailed in the complaint (§ 36 and the associated annexes), this suggestion was not respected, and in documented practice, the visits of the professionals were indeed disabled. Contrary to the claim of the Government, the municipalities in practice did not react to this situation and did not introduce any specific forms of social assistance which would substitute the missing support. Even if, as the Government states, this could have theoretically happened, it did not occur in practice.

10. Fourth, the Government claims that special efforts have been made in Finland to ensure accessibility of instructions, guidelines and information related to the protection against the virus and the pandemic measures. However, no such efforts have been made towards the persons in housing service units with whom the present complaint is concerned. These persons were confined in the institutions, prohibited to leave, and did not have the same access to information as others. Special efforts, therefore, should have been made to distribute accessible, easy-to-read information within social services. This includes information on the virus as well as information about where and how to file complaints against the Government measures. To the complainant's knowledge, based on a number of testimonies of persons living in the housing service units, no such information was made available there.

11. Lastly, the Government also contested the complainants claim that there was no legal basis for the introduced measures, asserting that they were based on Sections 6-9, 17 and 58 of the Communicable Diseases Act. The Government does not offer any additional analysis challenging the argumentation offered in the complaint. The complaint contained a detailed explanation why the above provisions cannot provide for a lawful basis for the introduced measures, and the complainant hereby only wishes to refer to this explanation contained in §§ 116-122 of the complaint. This argument has been, moreover, recently supported by the attached judgment of the Supreme Administrative Court of Finland from 7 January 2021, no. 21505/2020, which confirmed that the measures which are subject of this complaint indeed had no legal basis.

III. Conclusion

12. The Finnish Government appear to have based their comments on the admissibility of the complaint, primarily on disputing the merits of the complaint. In essence, they claim that the measures adopted in Finland in response to the pandemic towards persons with disabilities in the housing service units were adopted in order to protect the life and health of their residents, not the contrary.

13. However, the complaint did not target the adopted measures because they objectively increased the toll of the pandemic; it asked the Committee to assess whether the Finnish Government adopted measures to fight the pandemic, which were reasonable and non-discriminatory in the context of the available knowledge.

14. The complainant claimed that the chosen strategy contravened the extensive available data from abroad as well as numerous international organisations' warnings and recommendations, all agreeing that confining people within institutions during the pandemic is more dangerous than the contrary. Further to that, it deprived them of essential human contact and social assistance equally necessary to survive the pandemic and its psychological and social impact.

15. The complainant provided their brief comments on the Government's observations. However, it remains of the opinion that these are to be examined together as the merits of the complaint, not as the question of admissibility.

In Budapest, 31 March 2021

Validity Foundation

Attachment:

Judgment of the Supreme Administrative Court of Finland from 7 January 2021, no. 21505/2020

THE SUPREME ADMINISTRATIVE COURT

KHO:2021:1

Yearbook number:
KHO:2021:1
Date of issue:
7 January 2021
File No.:
H1
Record No.:
21505/2020
ECLI code: ECLI:FI:KHO:2021:1

The municipal manager of services for the disabled had set a visiting prohibition concerning housing units within the services for the disabled. The decision was reasoned with section 17 of the Communicable Diseases Act and it referred, among other things, to the instructions issued by the Ministry of Social Affairs and Health for the prevention of the coronavirus.

The Administrative Court had ruled inadmissible an appeal filed by a person living in the housing unit referred to in the decision and his father on the grounds that the decision was not to be considered to have set a visiting prohibition that was legally binding on the appellants.

The Supreme Administrative Court set aside the decision of the Administrative Court, took the case immediately under examination and set aside and removed the decision made by the manager of services for the disabled.

The Supreme Administrative Court deemed that an administrative matter referred to in the Communicable Diseases Act had been solved by the decision. By limiting the right of the appellants to private and family life, the visiting prohibition had affected their rights and obligations in such a way that it should have been possible to submit the conformity to law of the decision to be processed and solved by a court of law. By virtue of section 90 of the Communicable Diseases Act, it was possible to lodge an appeal against the decision of the manager of services for the disabled. The decision had to be considered a decision subject to appeal.

Setting a visiting prohibition means far-reaching interference with the protection of private life and family life of the residents of the housing unit. Section 17 of the Communicable Diseases Act did not prescribe about the authority to take measures that limited the fundamental rights. The visiting prohibition concerning the housing unit for the disabled could not have been issued as a measure for the prevention healthcare-associated infections referred to in the section. The decision was contrary to law.

Constitution of Finland, section 2, subsection 3, section 10, subsection 1, section 21, subsection 1, and section 80

European Convention on Human Rights, Article 8, item 1, and Article 13

Administrative Judicial Procedure Act, section 6, subsection 1, section 7, subsection 1, and section 81, subsection 2, items 2 and 4

Communicable Diseases Act, section 17, and section 90, subsection 1

Administrative Courts Act, section 7, subsection 1, item 5, and subsection 2

The decision appealed on

Administrative Court of Helsinki, 10 September 2020, number 20/0756/2

Previous proceedings of the case

By their decision made on 29 May 2020 (section 3), the *manager of services for the disabled of the City of Espoo* extended the visiting prohibition concerning housing units within the services for the disabled for the period from 1–30 June 2020. The visiting prohibition did not concern necessary rehabilitation services or personal assistants in accordance with the Act on Disability Services.

In the decision, the visiting prohibition was reasoned with section 17 of the Communicable Diseases Act and it referred, among other things, to the instructions issued by the Ministry of Social Affairs and Health on 20 March 2020 and 1 April 2020. The visiting prohibition was considered necessary for the prevention of COVID-19 coronavirus infections. According to the decision, the visits increased the risk of infection to the residents of the housing units for the disabled, some of whom belong to at-risk groups for a serious disease.

Instructions for a claim for rectification are attached to the decision.

A and *B* have appealed against the decision of the manager of services for the disabled and demanded that the decision be removed or set aside, and the case be returned to be processed again in such a way that no visiting prohibition is set. The demand was reasoned e.g. as follows:

It is not lawful to set a visiting prohibition concerning a housing unit. Pursuant to section 2 of the Constitution of Finland, the exercise of public powers shall be based on an Act. Instruction issued by the Council of State or the Ministry of Social Affairs and Health is not an act. It is not possible to decide on a general visiting prohibition in a housing unit by virtue of section 17 of the Communicable Diseases Act. The said provision concerns different measures, and its wording and legislative materials do not allow the kind of general prohibition decided on. In any case a general visiting prohibition is not in the right proportion. The legislation of Finland does not include such precisely defined mandates for restrictions that have passed the control of fundamental rights and would allow for setting a general visiting prohibition to persons with disabilities.

The decision is not in accordance with articles 4, 19, 22 and 23 of the UN Convention on the Rights of Persons with Disabilities. Furthermore, the City of Espoo has neglected the obligation to promote equality imposed on it by the Non-Discrimination Act. The decision limits the protection of private and family life of the appellant and his next of kin. The decision is also contrary to section 10 of the Constitution and article 8 of the European Convention on Human Rights. It limits the visits and the son’s freedom to invite anybody he chooses to his home. Father B and son A cannot meet each other. They live in the same building. The prohibition is unreasonable.

A lives in a service housing unit of X. His father B lives in the same building in a flat that is not part of the service housing unit. The relationship between A and B is a relationship between father and son which involves normal contacts inside the family. The father also helps his son due to his disability.

The manager of services for the disabled of the City of Espoo has given a statement due to the request concerning the interruption of the enforcement of the decision and demanded that the appeal be ruled inadmissible. The same matter is pending in the Social Affairs and Health Board of Espoo as a claim for rectification. In any case the appeal and the demand concerning the interruption of the enforcement shall be rejected.

The visiting prohibition to the housing units in question was discontinued from 25 June 2020 on by a decision made by the manager of services for the disabled of the City of Espoo on 24 June 2020.

A and *B* have submitted a rejoinder.

Decision of the Administrative Court

By its decision subject to appeal, the *Administrative Court* removed the instructions on appeal, actually instructions on claim for rectification, attached to the decision and ruled A and B's appeal inadmissible.

In the reasoning for its decision, the Administrative Court reported the provisions it applied and stated the following on the account given regarding the matter and as its conclusions:

A lives in a service housing unit of X. His father B lives in the same building in a flat that is not part of the service housing unit. In their appeals submitted to the Administrative Court, A and B demanded that the decision subject to appeal concerning the visiting prohibition be removed or set aside, among other things because the decision cannot have been made by virtue of the provision referred to in it.

In the case it shall first be solved whether the Administrative Court is competent to examine the appeals of A and B as administrative appeals and whether the object of appeal is a decision subject to appeal.

The manager of services for the disabled of the City of Espoo has set a general visiting prohibition e.g. in the housing unit of X by virtue of section 17 of the Communicable Diseases Act.

According to section 90, subsection 1 of the Communicable Diseases Act, appeal against the decisions referred to in the Communicable Diseases Act shall be lodged in accordance with the provisions of the Administrative Judicial Procedure Act.

The Administrative Court deems that the appeals of A and B should as such be examined as administrative appeals.

Section 17 of the Communicable Diseases Act concerns the prevention of healthcare-associated infections in healthcare and social welfare units. The provision does not specifically give the head of the unit a chance to set a visiting prohibition concerning the unit. Due to the requirement on conformity to law in accordance with section 2, subsection 3 of the Constitution of Finland and the requirements on precision and specificity concerning the restriction of fundamental rights,

preventive measures that interfere with a person's fundamental rights, which the visiting prohibition shall be considered to be, must be prescribed precisely in the law. The Administrative Court points out that the Communicable Diseases Act includes specific provisions on ordering a person who has contracted or is suspected to have contracted a generally hazardous communicable disease into quarantine or isolation and limiting their meeting of other people, and the said Act also prescribes separately about the opportunity of the municipal body responsible for the control of communicable diseases to decide on closing social and healthcare units. The Administrative Court states that by virtue of section 17 of the Communicable Diseases Act a visiting prohibition in a service unit cannot be set in a legally binding way. The matter shall not be evaluated in a different way for the reason that the Ministry of Social Affairs and Health had previously issued instructions concerning the matter.

The manager of services for the disabled of the City of Espoo shall not be considered to have set a legally binding visiting prohibition in the housing unit of X. The decision is not targeted at the appellants, and it has not been made in the purpose of restricting the communication between the appellants. The visiting prohibition was set to prevent COVID-19 infections, and it has indirectly hindered the communication between the appellants. In their decision EOAK 3232/2020 on 18 June 2020, the Parliamentary Deputy-Ombudsman mentioned problems concerning visiting prohibitions in 24-hour units of social services and proposed that the Ministry of Social Affairs and Health should start preparation of amendments to the legislation without delay. The visiting prohibition in the housing units in question in this case was discontinued from 25 June 2020 on by a decision made by the manager of services for the disabled of the City of Espoo on 24 June 2020.

The Administrative Court deems that the decision made by the manager of services for the disabled of Espoo is not a decision in accordance with section 6 of the Administrative Judicial Procedure Act which can be appealed by lodging an appeal in the Administrative Court. The matter shall not be evaluated differently because of the need of the parties concerned for legal protection or the demands concerning appeal and legal remedies set by fundamental and human rights.

Thus the appeal and the demand for the interruption of the enforcement shall be ruled inadmissible, and the instructions on appeal attached to the decision shall be removed.

Legal norms applied by the Administrative Court

Communicable Diseases Act, section 17, subsection 1, and section 90, subsection 1

Constitution of Finland, section 2, subsection 3, section 7, section 10, section 21, subsection 1, and section 80, subsection 1

European Convention on Human Rights, Articles 8 and 13

Administrative Judicial Procedure Act, section 6 subsection 1, section 7, subsection 1, and section 81 subsection 2, and section 127

The case was solved by members of the Administrative Court Camilla Sandström, Annina Nieminen, who also prepared the case, Bettina Kermann, and Inka Romo.

Proceedings in the Supreme Administrative Court

A and B have requested a permission to appeal on the decision of the Administrative Court and in their joint appeal demanded that the decision of the Administrative Court be set aside and that the Administrative Court be obligated to examine the case. The visiting prohibition shall be removed as it is contrary to the law.

E.g. the following has been presented to support the demands:

The decision of the manager of services for the disabled violates the rights of the appellants, e.g. the right of mobility, personal freedom and protection of family life, in a way that is contrary to the European Convention on Human Rights and the UN Convention on the Rights of Persons with Disabilities. The decision was in reality legally binding on the parties concerned. Among other things, the European Convention on Human Rights requires that the case can be processed in a court of law.

According to section 90 of the Communicable Diseases Act, appeal against the decisions referred to in the Act shall be lodged in an Administrative Court. The Supreme Administrative Court shall confirm that this also applies to the decision at hand, even if the provision on appeal were only intended to be applied to decisions concerning isolation and quarantine.

In their appeal filed to the Administrative Court the appellants reasoned for the unlawfulness of the visiting prohibition, among other things, by stating that there are no such precise provisions, controlled regarding fundamental rights, that would allow for setting a general visiting prohibition to persons with disabilities. Section 17 of the Communicable Diseases Act prescribes about different measures. Furthermore, the visiting prohibition was not in the right proportion. Being contrary to the Constitution, the European Convention on Human Rights and the UN Convention on the Rights of Persons with Disabilities, it limited the protection of family life of a disabled person and his next of kin.

The application for leave to appeal and the appeal have been sent for information to the *manager of services for the disabled of the City of Espoo*.

Decision of the Supreme Administrative Court

The Supreme Administrative Court has granted a leave to appeal and examined the case.

The decision of the Administrative Court is set aside. The Supreme Administrative Court takes the case immediately under examination without returning it to the Administrative Court. The decision of the manager of services for the disabled is set aside and removed.

Reasoning

1. Questions to be solved

In the Supreme Administrative Court the case is primarily about whether the decision made by the manager of services for the disabled was a decision referred to in section 6 of the Administrative Judicial Procedure Act which can be appealed by lodging a complaint in the Administrative Court and whether the matter involves other obstacles for examining the complaint. If it has been possible to appeal by lodging a complaint, it shall be solved whether the manager of services for the disabled can have set a visiting prohibition concerning the housing units of services for the disabled by virtue of section 17 of the Communicable Diseases Act.

2. Applicable legal norms

According to section 2, subsection 3 of the *Constitution of Finland*, the exercise of public powers shall be based on an Act. In all public activity, the law shall be strictly observed.

According to section 10, subsection 1 of the Constitution, everyone's private life, honour and the sanctity of the home are guaranteed.

According to section 21, subsection 1 of the Constitution, everyone has the right to have his or her case dealt with appropriately and without undue delay by a legally competent court of law or other authority, as well as to have a decision pertaining to his or her rights or obligations reviewed by a court of law or other independent organ for the administration of justice.

According to section 80 of the Constitution, the President of the Republic, the Government and a Ministry may issue Decrees on the basis of authorisation given to them in this Constitution or in another Act. However, the principles governing the rights and obligations of private individuals and the other matters that under this Constitution are of a legislative nature shall be governed by Acts.

According to article 8, item 1 of the *European Convention on Human Rights*, everyone has the right to respect for his private and family life, his home and his correspondence. According to item 2, there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society among other things for the protection of health.

According to article 13 of the Convention on Human Rights, everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

According to section 6, subsection 1 of the *Administrative Judicial Procedure Act*, a decision by which an authority has ruled on an administrative matter or ruled an administrative matter inadmissible shall be eligible for judicial review by appeal.

According to section 7, subsection 1 of the Administrative Judicial Procedure Act, a person whom a decision concerns, or whose right, obligation or interest is directly affected by the decision, and a person whose right of appeal is separately provided by law may request a judicial review of an administrative decision by way of appeal.

According to section 81, subsection 2, items 2 and 4 of the Administrative Judicial Procedure Act, the court shall dismiss an appeal as inadmissible if the decision is not eligible for appeal or the appellant has no right of appeal.

According to section 17 of the *Communicable Diseases Act*, a healthcare and social welfare unit must systematically combat healthcare-associated infections. Measures must be harmonised with the measures of promoting patient safety laid down in section 8 of the Health Care Act.

According to subsection 2, the head of the unit must implement surveillance for communicable diseases and extensively drug-resistant microbes, and ensure of infection control. The unit must ensure that patients, clients and personnel are properly protected and placed, and that antimicrobial drugs are used appropriately.

According to subsection 3, the head of the unit must enlist the support of healthcare professionals specialised in the control of communicable diseases, and coordinate his or her activities with measures implemented by the municipality or joint municipal authority as well as with national control programmes on healthcare-associated infections.

According to reasoning in the Government Proposal (HE 13/2016 vp) on the Communicable Disease Act concerning section 17, healthcare-associated infections cause a significant share of the deaths related to communicable diseases in Finland as well as other developed countries. They are a threat to patient safety as well as the occupational safety of personnel. Greater contribution than at present shall be directed at their prevention. Efficient prevention of healthcare-associated infections reduces the costs of healthcare, and the cost-effectiveness of the activities has been researched and found positive. The prevention would be proscribed as a duty of all healthcare units, regardless of whether they are municipal, private or maintained by other party. In addition, the prevention of healthcare-associated infections would be prescribed as a duty of social services units, because the problems in them are similar to those in healthcare. As there may not necessarily be personnel familiar with the duties in social services, the Act would set an obligation to use the help of healthcare professionals familiar with the prevention of communicable diseases. Such personnel could include physicians and nurses with training on prevention of infections.

According to section 90, subsection 1 of the Communicable Diseases Act, appeal against the decisions referred to in this Act shall be lodged in an Administrative Court in accordance with the provisions of the Administrative Judicial Procedure Act (586/1996).

According to section 7, subsection 1, item 5 of the Administrative Courts Act, an expert member shall participate in the processing of and deciding on a case referred to in the Communicable Diseases Act in the Administrative Court. According to subsection 2, regarding measures other than the final decision on the principal matter the Administrative Court may however make a decision in matters referred to in subsection 1 without the expert member.

3. Account provided in the matter

A lives in housing unit of X of the City of Espoo for persons with disabilities in need of 24-hour care. His father B lives in another flat in the same building. B visits his son e.g. because of the need for help due to his disability.

The manager of services for the disabled in the City of Espoo’s family and social services extended by their decision made on 29 May 2020 the visiting prohibition e.g. in the housing unit of X from 1 June – 30 June 2020 by virtue of section 17 of the Communicable Diseases Act. According to the decision, the visiting prohibition did not concern necessary rehabilitation services or personal assistants in accordance with the Act on Disability Services and Assistance. The City of Espoo had informed on its website and in the housing unit on 9 April 2020 that visits in care homes, housing units and the Espoo Hospital are not permitted until further notice in order to prevent the coronavirus infections. Visits took place despite the instructions, which had increased the risk of infection to the residents of the housing unit for the disabled some of whom belong to at-risk groups of the serious form of the disease. Hence it was necessary to set an official visiting prohibition.

The Parliamentary Deputy-Ombudsman has deemed in their decisions issued since then (18 June 2020 EOAK/3232/2020, 22 October 2020 EOAK/3739/2020, 23 October 2020 EOAK/3479/2020, and 6 November 2020 EOAK/3847/2020) that the instructions given by the Ministry of Social

Affairs and Health were erroneous and resulted in prohibitions or restrictions of visits in healthcare and social services housing units contrary to the law.

4. Legal evaluation and conclusion

According to section 90, subsection 1 of the Communicable Diseases Act, appeal against the decisions referred to in the Act shall be lodged in accordance with the provisions of the Administrative Judicial Procedure Act. After the old Administrative Judicial Procedure Act was repealed, the provision of the law refers to the new Administrative Judicial Procedure Act. According to section 6, subsection 1 thereof, a decision by which an authority has ruled on an administrative matter shall be eligible for judicial review by appeal.

The Administrative Court ruled the appeal inadmissible on the grounds that the decision made by the manager of services for the disabled of Espoo is not a decision in accordance with section 6 of the Administrative Judicial Procedure Act. The Administrative Court stated that by virtue of section 17 of the Communicable Disease Act a visiting prohibition in a service unit cannot be set in a legally binding way. The manager of services for the disabled shall not be considered to have set a legally binding visiting prohibition in the housing unit of X.

The Supreme Administrative Court states that the decision made by the manager of services for the disabled mentions section 17 of the Communicable Diseases Act as the basis for the authority to issue a visiting prohibition. It appears from the instructions issued by the Ministry of Social Affairs and Health on 20 March 2020 and 1 April 2020, as described in the decision, that social services units were urged to set a visiting prohibition in the units by virtue of section 17 of the Communicable Diseases Act. Although the said legal provision does not prescribe about a visiting prohibition or other decision-making concerning contacts of the residents in social services units, the instruction of the Ministry of Social Affairs and Health supported such interpretation of section 17 of the Communicable Diseases Act based on which the head of the unit could prohibit visits.

The specific purpose of the decision made by the manager of services for the disabled was to set a legally obligating visiting prohibition in the City of Espoo’s housing units of the disabled. The visiting prohibition was set to protect the residents and personnel of the housing unit from a COVID-19 virus infection.

The decision made by the manager of services for the disabled solved an administrative matter concerning housing services for the disabled referred to in the Communicable Disease Act. In reality the visiting prohibition limited the right of the appellants to private and family life. Therefore it is a question of such a decision concerning the rights and obligations of the appellants referred to in section 21 of the Constitution whose conformity to law had to be possible to submit to be processed and solved by a court of law. It was possible to appeal on the decision made by the manager of services for the disabled in the order prescribed in section 90 of the Communicable Diseases Act by lodging an administrative appeal in the Administrative Court. Thus the instruction on claim for rectification in accordance with the Local Government Act attached to the decision was erroneous.

The Supreme Administrative Court deems that the decision made by the manager of services for the disabled shall be considered a decision subject to appeal in the way referred to in section 6 of the Administrative Judicial Procedure Act, and the Administrative Court cannot have ruled the appeal inadmissible on the grounds it mentioned. There is no other obstacle for examining the appeal, either. Hence the decision of the Administrative Court shall be reversed.

The matter is about the legal evaluation of the authority of the decision-maker which does not require evaluation of questions based on substantive law under the Communicable Disease Act. Hence the Supreme Administrative Court deems that it is not necessary to return the matter to the Administrative Court to be solved by a composition referred to in section 7, subsection 1, item 5 of the Administrative Courts Act, but it can be immediately examined by the Supreme Administrative Court to avoid delay.

The Supreme Administrative Court states that issuing a visiting prohibition concerning the housing unit means far-reaching interference with the protection of private life and family life of the residents of the housing unit. Section 17 of the Communicable Diseases Act concerns the prevention of healthcare-associated infections. The legal provision does not prescribe about the authority to take measures that limit the fundamental rights. Such authority is prescribed in the law only for situations of quarantine and isolation (HE 13/2016 vp, StVM 24/2016 vp, and PeVL 11/2016 vp). The visiting prohibition concerning the housing unit of the disabled cannot have been set as a preventive measure for healthcare-associated infections as referred to in section 17 of the Communicable Diseases Act. Therefore it was not possible to set a visiting prohibition by a decision made by the manager of services for the disabled. The decision is contrary to the law.

Due to absence of regulation on visiting prohibition in the law it is not possible to decide more precisely in a court of law which restrictions concerning visits might have been acceptable and necessary in terms of the system of fundamental rights.

On the aforementioned grounds the decision of the Administrative Court shall be reversed and the decision made by the manager of services for the disabled shall be set aside and removed.

The case was solved by Justices Anne E. Niemi, Outi Suviranta, Janne Aer, Petri Helander and Toomas Kotkas. The case was prepared by Kristina Björkvall.